

## **REMARKS**

Claims 6-10, 27, and 45-61 are presented for examination. Claims 1-5, 11-26, and 28-44 have been canceled.

### **A. Amendments**

#### **1. Specification**

The name of the test procedure used to determine the cocoa procyanidin content has been corrected. "HPLC" stands for "High Performance Liquid Chromatography", not "High Pressure Liquid Chromatography". See the Adamson et al. article cited on page 19, lines 23 to 27.

#### **2. Amended Claims**

Claims 6, 7, and 8 have been corrected. The amount of cocoa polyphenols after pretreatment was erroneously stated to be "about 4.5 milligrams". The amount should have read "about 50 to about 75 milligrams". See page 4, lines 9-15 where it is taught that cocoa solids of the additive are pretreated and that "[t]he cocoa solids after the pretreatment have a cocoa procyanidin content of at least about 50 to about 75 milligrams of procyanidins". See page 4, line 21 to page 5, line 1 where it is taught that the binder syrup contains pretreated high CP cocoa solids and that "[t]he high CP cocoa solids after the pretreatment have a cocoa procyanidin content of at least about 50 to 75 ... milligrams of cocoa procyanidins per gram of the cocoa solids".

Claims 8, 10, and 27 have been amended to identify the syrup as "an aqueous solution of a nutritive carbohydrate sweetener, a sugar substitute, or a combination of the sweetener and the sugar substitute". Support for this amendment can be found at page 15, lines 27-28.

Claim 10 has been amended to delete the phrase "and optionally with up to about 5% by weight of a lecithin and/or up to about 20% by weight of a chocolate liquor".

Claim 27 has been amended (a) to delete "up to about 5% by weight of a lecithin" and to add "with about 0.05% to about 5% of a lecithin"; (b) to delete "and/or up to about 20% by weight of a chocolate liquor"; and (c) to add "with about 0.5% to about 20% of a chocolate liquor, or with a mixture of the lecithin and the chocolate liquor".

**B. New Claims**

Support for the new claims is as follows:

Claims 45 to 48 - see page 4, lines 15-17 for the preferred and more preferred amount of "about 60 to about 75" and "about 75 to about 80 for the food additive; see page 4, line 31 for the same amounts for the binder syrup.

Claim 49 (8) - see page 15, lines 30-31 where the preferred sweetener "comprises a corn syrup or a blend of corn syrups and another sweetener".

Claim 50 (49)(8) - see page 16, lines 1-3 for the specific sweeteners recited.

Claim 51 (8) - see page 16, lines 4-12 for the sugar substitutes recited.

Claim 52 (51)(8) - see page 16, lines 3-16 for the high potency sweeteners, sugar alcohols, and bulking agents recited.

Claim 53 (27) and 54 (27) - see page 4, lines 24-26 for the lecithin and chocolate liquor amounts.

Claim 55 (27) and 56 (55) - see page 14, lines 30-31 for the lecithin sources recited.

Claims 57 (10) and (27), 58 and (27), 59 (10) and (27), 60 (10) and (27), and 61 (10) and (27) - see page 17, lines 1-12 for the amounts of the syrups and the pretreated cocoa solids.

Claims 65 (10) and 66 (27) - see page 16, lines 24-26 for the optional ingredients.

**C. § 112, Second Paragraph Rejection of Claims 10 and 27**

Claim 10 has been rejected under § 112, 2<sup>nd</sup> paragraph, as indefinite because the claim includes lecithin and/or chocolate liquor as optional components. The Examiner states that it is unclear whether the lecithin and chocolate liquor are included or excluded from the composition. The Examiner also believes that the recitation of "and/or" in Claims 10 and 27 make the claims unclear.

In view of the Amendment of Claims 10 and 27, the rejection is moot.

**D. § 112, 1<sup>st</sup> Paragraph Rejection of Claims 8-10 and 27**

Claims 8-10 and 27 are rejected under § 112, 1<sup>st</sup> paragraph, because the Examiner believes that the specification, while enabling for a syrup made of an aqueous solution of a nutritive carbohydrate sweetener and/or a sugar substitute (as disclosed on page 15) does not enable any and all syrup compositions.

In view of the amendment of Claims 8-10 and 27 to limit the syrups to "aqueous solutions of a nutritive carbohydrate sweetener, a sugar substitute, or a combination of the sweetener and the sugar substitute", the rejection is moot.

**E. Closing**

The Examiner is thanked for the allowance of Claims 6-7.

Entry of this amendment and an early allowance is respectfully requested. No new matter is presented.

**F. Correspondence and Fees**

In the event that any fees are required, authorization is hereby given to charge Deposit Account No. 03-3839.

Please address all correspondence to Intellectual Property Docket Administrator, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, One Riverfront Plaza, Newark, NJ 07102-5497.

Should there be any questions or other matters that may be resolved by a telephone call, the Examiner is invited to contact the undersigned attorney at the telephone number provided below.

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Respectfully submitted,

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